

Federal Deposit Insurance Corporation

§ 380.5

Senior executive. The term “senior executive” means any person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company, whether or not: The person has an official title; the title designates the officer an assistant; or the person is serving without salary or other compensation. The chairman of the board, the president, every vice president, the secretary, and the treasurer or chief financial officer, general partner and manager of a company are considered senior executives, unless the person is excluded, by resolution of the board of directors, the bylaws, the operating agreement or the partnership agreement of the company, from participation (other than in the capacity of a director) in major policymaking functions of the company, and the person does not actually participate therein.

Subsidiary. The term “subsidiary” means any company which is controlled by another company at the time of, or immediately prior to, the appointment of receiver of the covered financial company.

[76 FR 41639, July 15, 2011, as amended at 77 FR 25353, Apr. 30, 2012; 77 FR 63214, Oct. 16, 2012]

§ 380.2 [Reserved]

§ 380.3 Treatment of personal service agreements.

(a) For the purposes of this section, the term “personal service agreement” means a written agreement between an employee and a covered financial company or a bridge financial company setting forth the terms of employment. This term also includes an agreement between any group or class of employees and a covered financial company, or a bridge financial company, including, without limitation, a collective bargaining agreement.

(b)(1) If before repudiation or disaffirmance of a personal service agreement, the Corporation as receiver of a covered financial company, or a bridge financial company accepts performance of services rendered under such agreement, then:

(i) The terms and conditions of such agreement shall apply to the performance of such services; and

(ii) Any payments for the services accepted by the Corporation as receiver shall be treated as an administrative expense of the receiver.

(2) If a bridge financial company accepts performance of services rendered under such agreement, then the terms and conditions of such agreement shall apply to the performance of such services.

(c) No party acquiring a covered financial company or any operational unit, subsidiary or assets thereof from the Corporation as receiver or from any bridge financial company shall be bound by a personal service agreement unless the acquiring party expressly assumes the personal service agreement.

(d) The acceptance by the Corporation as receiver for a covered financial company, or by any bridge financial company or the Corporation as receiver for a bridge financial company of services subject to a personal service agreement shall not limit or impair the authority of the receiver to disaffirm or repudiate any personal service agreement in the manner provided for the disaffirmance or repudiation of any agreement under 12 U.S.C. 5390(c).

(e) Paragraph (b) of this section shall not apply to any personal service agreement with any senior executive or director of the covered financial company or covered subsidiary, nor shall it in any way limit or impair the ability of the receiver to recover compensation from any senior executive or director of a covered financial company under 12 U.S.C. 5390 and the regulations promulgated thereunder.

[76 FR 41640, July 15, 2011]

§ 380.4 [Reserved]

§ 380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.

The Corporation as receiver shall distribute the value realized from the liquidation, transfer, sale or other disposition of the direct or indirect subsidiaries of an insurance company, that are not themselves insurance companies, solely in accordance with the